

August 4, 2000

D.P.U. 96-8C-1; D.P.U. 97-8C-1; D.T.E. 98-8C-1; D.T.E. 99-8C-1

Application of Western Massachusetts Electric Company pursuant to the provisions of G.L. c. 164, § 94G, for approval by the Department of Telecommunications and Energy of the actual unit by unit and system performance of the Company with respect to each target set forth in the Company's approved performance programs for the performance periods between 1996 and 1999; and

D.T.E. 97-120 (Phase 2)

Petition of Western Massachusetts Electric Company pursuant to G.L. c. 164, §§ 76 and 94, and 220 C.M.R. §§ 1.00 et seq., for review of its electric industry restructuring proposal; and

D.T.E. 00-33

Petition of Western Massachusetts Electric Company for approval of its Transition Charge Reconciliation Filing for the period from March 1, 1998 through December 1, 1999 pursuant to G.L. c. 164, § 1A(a), 220 C.M.R. § 11.03(4) and the Restructuring Settlement Agreement approved by the Department of Telecommunications and Energy in D.T.E. 97-120.

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I. INTRODUCTION

On June 30, 2000, Western Massachusetts Electric Company ("WMECo" or the "Company") and the Attorney General of the Commonwealth ("Attorney General") together, the ("Parties") filed for approval by the Department of Telecommunications and Energy ("Department") a Joint Motion for Approval of Offer of Settlement ("Motion") and an Offer of Settlement ("Settlement") concerning: (1) the Department's review of the Company's 1996 through 1999 generating unit performance proceedings ("GUPP");⁽¹⁾ and (2) the Company's Restructuring Plan proceeding, Western Massachusetts Electric Company, D.T.E. 97-120 (1999). The Parties requested that the Department approve the Settlement on or before August 7, 2000.

II. DESCRIPTION OF SETTLEMENT

- Generating Unit Performance Proceedings

The Settlement proposes to terminate and resolve each of the Company's GUPPs for the period June 1, 1995 through May 31, 1999, along with all matters contained in the those proceedings, and that no such matter will be raised in any present or future proceeding (Settlement at 5). The Settlement proposes that WMECo will recover \$4,172,888 from its deferred fuel account.⁽²⁾ In addition, the Settlement proposes that the Department's review of the Company's deferred fuel account under-recovery will be terminated (Settlement at 5).⁽³⁾

- Restructuring Plan
 - Introduction

With respect to the Company's Restructuring Plan approved in D.T.E.97-120, the proposed Settlement: (1) terminates Phase 2 of the Company's Restructuring Plan proceeding, D.T.E. 97-120; (2) terminates Federal Energy Regulatory Commission ("FERC") Docket No. ER99-3196, relating to the Northeast Utilities Generation & Transmission ("NUG&T") agreement; (3) terminates all matters and issues with respect to the assignment of specific wholesale contracts from WMECo to Select Energy, Inc. ("Select");⁽⁴⁾ and (4) eliminates the Company's request for an inflation adjustment (Settlement at 6-8).

2. Phase 2

The Department stated that Phase 2 of D.T.E. 97-120 would address plant investments that have not been reviewed by the Department. D.T.E. 97-120, at 9-10. The Phase 2 provision of the Settlement provides for: (1) the recovery of the cost of all capital additions to the Millstone 1 nuclear unit as transition costs through the Company's transition charge consistent with the Department's Order in D.T.E. 97-120; (2) the recovery of the Millstone 2 and 3 net cost of capital additions subsequent to the Company's last general rate case, Western Massachusetts Electric Company, D.T.E. 91-290 (1992), through December 31, 1995, as transition costs through the Company's transition charge; (3) the recovery of costs related to the Millstone 2 steam generators based on the net proceeds received from the sale of the unit;⁽⁵⁾ and (4) the recovery of capital additions to Millstone 2 and 3 after 1995 through the net proceeds of the sale of the units (Settlement at 6).

3. FERC Docket No. ER99-3196

The NU companies have operated pursuant to the FERC-jurisdictional NUG&T agreement as a means of reducing generation and transmission costs. D.T.E. 97-120, at 106. In light of the recent electric industry restructuring, modifications to the NUG&T agreement were required to account for divestiture of generation units. Northeast Utilities Service Company ("NUSCo"), on behalf of WMECo and certain other NU companies, filed an NUG&T amendment with FERC. The Attorney General filed a protest with respect to the cost allocation mechanism of the modifications to the NUG&T Agreement.⁽⁶⁾ FERC responded that the Company's proposed amendment had "not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful" (Settlement at 3, citing 88 FERC ¶61,113 (July 28, 1999)). FERC suspended the filing and set the matter for hearing pending resolution of state restructuring dockets.

Pursuant to the proposed Settlement, the Parties agree that all protests, requests, appeals, motions or other issues raised by the Attorney General in the FERC proceeding regarding modification to the NUG&T Agreement to address divestiture of WMECo's generating units will be withdrawn with prejudice (Settlement at 6). NUSCO and the Attorney General will file a joint request to withdraw the Attorney General's protest, and request that FERC accept for filing the NUG&T agreement as submitted by NUSCO (id.).

4. Wholesale Contracts

On December 29, 1999, FERC accepted for filing from Select an agreement for a transfer of wholesale power supply contracts from WMECo to Select (Settlement at 7, citing Select Energy, Inc., Notice of Filing, FERC- ER00-102). As part of the agreement, WMECo committed⁽⁷⁾ to hold harmless its customers from any loss in revenues from the wholesale contracts in excess of market value. The Department intervened in the FERC proceeding (Settlement at 7). In the Company's transition charge reconciliation filing, docketed as D.T.E. 00-33, WMECo proposed a reduction to the transition costs of \$3.363

million related to its wholesale power supply contracts. The proposed Settlement provides that the Department terminate its participation at FERC and not contest the valuation of the proposed wholesale contracts set forth by the Company or its affiliates in Docket No. ER00-102. The proposed Settlement also provides that the Attorney General not contest the valuation of the assigned contracts in any proceeding before the Department or any future proceeding (id. at 7).

5. Inflation Adjustment

In a letter to the Department, WMECo requested an inflation adjustment from March 1999 through August 1999 pursuant to G.L. c. 164, § 1B(e) (id. at 8). WMECo's request was not docketed (id.). As a result of this proposed Settlement, WMECo's request for an inflation adjustment is withdrawn (id.).

IV. STANDARD OF REVIEW

In assessing the reasonableness of an offer of settlement, the Department must review the entire record as presented in the Company's filing and other record evidence to ensure that the settlement is consistent with Department precedent and the public interest and results in just and reasonable rates. See Western Massachusetts Electric Company,

D.P.U. 94-8C-A\ 95-8C-1\ 96-8C-1, at 9 (1996); Barnstable Water Company, D.P.U. 91-189, at 4 (1992); Western Massachusetts Electric Company, D.P.U. 92-13, at 7 (1992).

The Department's authority to review and approve settlements of generating unit performance review issues is derived from its statutory mandate to ensure that investor-owned electric utility companies achieve the lowest possible overall costs to their customers for the procurement and use of fuel and purchased power included in the fuel charge, consistent with accepted management practices, safety and reliability of electric service, and reasonable regional power exchange requirements. See G.L. c. 164, § 94G(a); see also Boston Edison Company, D.P.U. 88-28/88-48/89-100, at 9 (1989). In assessing the reasonableness of an offer of settlement that purports to settle performance review issues, the Department must scrutinize the settlement in light of the evidentiary record and then weigh the settlement against the probable outcome and resulting rates were the performance review issues to follow the customary course to issuance of final Department Orders. Id. at 9-10. As part of its analysis, the Department must assess whether the financial accommodation reached between the company and other parties to the settlement fairly repairs the harm to ratepayers that the company's actions and decisions may reasonably be said to have caused. Id. at 10.

In order to assess the probable outcome of a performance review proceeding, the Department must apply the appropriate statutes and other precedent to the information available in the record. The Department's statutory authority for undertaking generating unit performance reviews is found in G.L. c. 164, § 94G. The Department is authorized to set a quarterly fuel charge for a company's recovery of prudently incurred costs for fuel and purchased power. G.L. c. 164, § 94G(b). To aid in determining the prudence of such

costs at a later date, the Department is required to annually set performance goals for the generating units that provide electric power to jurisdictional electric companies. G.L. c. 164, § 94G (a).

Also in accordance with G.L. c. 164, § 94G, the Department conducts annual performance review proceedings wherein actual performance data obtained during a company's performance period are reviewed and compared to the goals that had been set for that period in a prior goal-setting proceeding. Should a company fail to achieve one or more of the goals established for a performance period under review, the company must present evidence explaining the variance at the next fuel charge proceeding. G.L. c. 164, § 94G (a). The Department conducts an investigation into the circumstances behind each failure. These investigations typically involve a detailed review of activities surrounding particular generating units in order to determine whether a company, in operating and maintaining its units, followed all reasonable or prudent practices consistent with the statute. Specifically, if the Department finds that the company has been unreasonable or imprudent in such performance, in light of the facts which were known or should reasonably have been known by the company at the time of the actions in question, the company shall deduct from the fuel charge proposed for the next quarter or such other period as it deems proper the amount of those fuel costs determined by the Department to be directly attributable to the unreasonable or imprudent performance. G.L. c. 164, § 94G (a).

With respect to the provisions of the Settlement addressing the Company's Restructuring Plan, the Department considers whether they are consistent with (1) applicable law and Department precedent, and (2) the overall goal and principles for restructuring that were established in the Act and with D.T.E. 97-120.

V. ANALYSIS AND FINDINGS

The Department has evaluated the provisions of the proposed Settlement Agreement pertaining to the Company's GUPP proceedings in light of the information submitted in each GUPP proceeding between June 1, 1995 and May 31, 1999. The Department finds that the Settlement is consistent with Department precedent regarding performance review settlements and is a reasonable resolution of the issues presented in the Company's performance review filings.

The Department notes that the Settlement does not address issues concerning the performance of the Company's generating units between June 1, 1999 and divestiture as specified in Western Massachusetts Electric Company, D.T.E. 98-13F (1999). Therefore, for the Company's fossil and hydro units, the Department directs the Company to submit, in its next reconciliation filing, generating unit performance data for the period June 1, 1999 to the date of divestiture. In Western Massachusetts Electric Company, D.T.E. 99-54 (2000), the Department granted the Company an exemption from the requirements of G.L. c. 164, § 94G(a) because the performance of Millstone 2 and Millstone 3 was subject to review under a performance-based ratemaking mechanism beginning on January 1, 2000. In light of the exemption granted by the Department for Millstone 2 and

Millstone 3, the Department directs the Company to submit, in its next reconciliation filing, generating unit performance data for Millstone 2 and Millstone 3 for the period June 1, 1999 through December 31, 1999. With respect to Vermont Yankee, the Department notes that, in a proceeding currently before the Department, D.T.E. 00-11, the Company has proposed to buy out its Vermont Yankee contract. Until the Company concludes its interests in Vermont Yankee, the Company is directed to submit, in its next reconciliation filing, generating unit performance data for Vermont Yankee for the period beginning June 1, 1999.⁽⁸⁾

With respect to the provisions of the Settlement regarding the Company's Restructuring Plan, the Department recognized that extensive investigation and litigation of prudence of investments made years ago may not be the best use of the Department's and other parties' time and resources, and hence not the most efficient way to protect ratepayers. D.T.E. 97-120, at 52. The Department stated that extended litigation could delay final determination and securitization of WMECo's stranded costs, which could lead to increased costs to customers. Id. The Department has evaluated the provisions of the proposed Settlement that address the Company's Restructuring Plan in light of the entire record in D.T.E. 97-120. The Department finds that the Settlement provides a reasonable resolution of the outstanding issues related to the Company's Restructuring Plan.

The Department finds that the provisions of the Settlement addressing the GUPP and Restructuring Plan are consistent with Department precedent, result in just and reasonable rates, and are in the public interest. Therefore, the Department approves the Settlement.

In accordance with the terms of the Settlement, our acceptance of the Settlement does not constitute a determination as to the merits of any allegations, contentions, or arguments made in this investigation. Finally, we note that our acceptance of the Settlement does not set a precedent for future performance review proceedings, restructuring proceedings or rate filings, whether ultimately settled or adjudicated.

VIII. ORDER

After due notice and consideration, it is

ORDERED: That the Joint Motion for Approval of Offer of Settlement Agreement, filed on June 30, 2000, by the Attorney General and Western Massachusetts Electric Company is granted; and it is

FURTHER ORDERED: That the Company comply with any and all directives contained herein.

. By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. The Settlement resolves outstanding issues in Western Massachusetts Electric Company, D.P.U./D.T.E. 96-8C-1, D.P.U./D.T.E. 97-8C-1, D.T.E. 98-8C-1 and D.T.E. 99-8C-1.
2. The deferred fuel account represents unrecovered costs associated with the Company's fuel adjustment clause. This account was established as part of a joint settlement agreement between the Company and the Attorney General that was approved by the Department in Western Massachusetts Electric Company, D.P.U. 96-8C (1996).
3. In D.T.E. 97-120, at 61, the Department stated that this account was to be reviewed in D.P.U./D.T.E. 96-8C-1, D.T.E. 97-8C-1, and D.T.E. 98-8C-1.
4. Select is a competitive wholesale marketing affiliate in the Northeast Utilities ("NU") holding company system.
5. WMECo will be allowed to recover the net book value of the steam generators, provided, however, to the extent that 50 percent of WMECo's share of the net proceeds from the sale is less than \$11,375,000, the Company shall, in its next reconciliation proceeding, reduce the fixed component of the transition charge as of March 1, 1998, through the date of sale, by the amount by which 50 percent of WMECo's share of net proceeds is less than \$11,375,000 (Settlement at 8).
6. The Attorney General argued that the cost allocation method would saddle WMECO with stranded costs that would be more appropriately allocated to the other NU companies (Northeast Utilities Service Company, ER99-3196, at 2). In D.T.E. 97-120, the Attorney General presented the same argument but the Department disagreed with the Attorney General and approved the Company's cost allocation method for stranded cost recovery.
7. The Company reiterated this commitment by letter to the Department dated June 22, 2000, filed in D.T.E. 00-33.
8. On March 1, 2000, the Company submitted a Performance Program filing for its nuclear units. Western Massachusetts Electric Company, D.T.E. 00-28. In light of the directives to the Company regarding generating unit performance in this order, the Department closes D.T.E. 00-28 without investigation.